

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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TOWN OF FRAMINGHAM REQUEST FOR  
DETERMINATION OF RATES APPLICABLE TO  
TRANSPORTATION AND TREATMENT OF SEWAGE  
PURSUANT TO INTERMUNICIPAL AGREEMENT

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**ASHLAND’S OPPOSITION TO FRAMINGHAM’S MOTION TO STRIKE THE NEW  
DOCUMENTS ATTACHED TO ASHLAND’S INITIAL BRIEF AND THOSE  
PORTIONS OF ASHLAND’S BRIEF DISCUSSING THOSE NEW DOCUMENTS**

The town of Ashland (“Ashland”), hereby opposes the town of Framingham’s (“Framingham”) motion to strike portions the new documents attached to Ashland’s initial brief and those portions of Ashland’s Brief discussing those new documents. Framingham’s motion should be **DENIED** in all respects.

**ARGUMENT**

Framingham first presented the April 2003 and May 2003 flow charts, Exhibits 45 and 46, on September 16, 2003 to Ashland, four business days prior to the final hearing. At that time, the source data for the charts was completely unknown since the information was obviously generated by Framingham experts and was not primary source data. September 23, 2003 Transcript, pp. 820-821. As a result, it was impossible for Ashland’s experts to analyze this data without further explanation. Id. Upon the presentation of Framingham’s rebuttal at the very end of the last day of the hearings, Ashland had a better understanding of the origin of this data. While Ashland had obtained some rebuttal data by that point, Exhibits 31, 32 and 33 respectively, because Ashland did not know the scope and intent of the Exhibits 45 and 46, Ashland was unable until after the September 23, 2003 hearing to understand how this data affected Exhibits 45 and 46. For that reason, Ashland submitted these exhibits in its brief.

There is nothing in the regulations which prohibits Ashland from presenting new arguments in its brief. As the exhibits referenced are largely public documents, the information presented therein is easily obtainable even if Ashland presents simply its arguments. There is nothing in the regulations which would prohibit Ashland from presenting the information without the exhibits referenced.

The December 9, 2002 Memorandum issued by the Department states in relevant part on page 4 refers to only exhibits. It does not refer to the discussion of information or data.

#### I.H. Late-Filed Exhibits

Exhibits offered after the close of the hearings, if objected to by any part, labor under a heavy burden of untimeliness, for they would not be subject to cross-examination or rebuttal. Late-filed exhibits must be accompanied by a motion to reopen the record and supported by appropriate affidavits. Only for good cause shown, in the face of an objection, will such exhibits be marked and admitted into evidence. (emphasis added).

Likewise, C.M.R 1.11(7) also only refers to the filing of documents and exhibits. It does not refer to the discussion of information. Specifically, this section states:

C.M.R. 1.11(7) Filing of Documents Subsequent to Hearing. The Department may, for good cause shown, allow the parties to file evidentiary documents of any kind, or exhibits, at a time subsequent to the completion of hearing, such time to be determined by the Commission. (emphasis added).

Further, this section implies that it is in the Department's discretion to allow the filing of such documents, especially where as in this case, the documents are helpful to clarify the exhibits already filed. Ashland's Exhibits 24-33 are helpful as they show Framingham's attempts to cut off Ashland's access to Framingham's sewerage system, the amount of flow that Chestnut Street and Bracket Road Pump Stations are capable of pumping and the excessive amount of rain fall during the time periods provided in the Decembrer 1996, April 2000, March 30, 2003 and April

12, 2003 flow charts Framingham presented which attempt to show either Ashland's exceedance of the IMA or surcharging in Framingham's pipes.

Nor does 220 C.M.R. §1.11(8) specifically prohibit Ashland from making new arguments. At the last hearing on September 23, 2003, Ashland did not formally "rest." Ashland did, however, assent that there was no need to proceed further with any additional hearings after the conclusion of the September 23, 2003 hearing. By agreeing that the hearings were completed, Ashland certainly did not agree to "rest" with regards to discussing information and arguments in its brief. There is nothing in this memorandum which would prohibit Ashland from referring to the information contained within these documents in its brief.

Because there is nothing in the regulations which would prohibit the discussion of information even without the actual introduction of exhibits, nothing in Ashland's brief should be stricken. And even if the reference to the exhibits were to be stricken, Framingham's attempts to strike an excessive amount of language in Ashland's brief is unfair and exceedingly overreaching. Framingham is attempting in attempt to strike language well beyond the scope of the discussion about the information contained in the exhibits.

### **CONCLUSION**

WHEREFORE, for all the reasons set forth above, Ashland respectfully requests that this Court **DENY** the Framingham's motion to strike the new documents attached to Ashland's initial brief and those portions of Ashland's brief discussing those new documents.

Respectfully submitted,

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Dated: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Maureen P. Hogan, hereby certify that on this \_\_\_\_ day of November 2003, I served the foregoing by mailing a copy first class, postage prepaid, to:

Christopher J. Petrini, Esq.  
Erin K. Higgins, Esq.  
Conn Kavanaugh, et al.  
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Boston, MA 02109

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Maureen P. Hogan